

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2007

CORAM :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

Writ Petition No.5253 of 1998

C.Velayutham

... Petitioner

v.

1.The State of Tamil Nadu
rep.by its Commissioner
and Secretary to Government
Industries Department
Fort St.George, Chennai - 9

2.The District Collector
Tiruchi District
Tiruchi.

... Respondents

Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.V.Sanjeevi

For Respondents : Mr.R.Thirugnanam,
Special Government Pleader

ORDER

The writ petition is filed seeking for the relief of issuance of writ of Certiorarified Mandamus to call for the records of the first respondent relating to the letter No.32162/MMC-2/97-4 dated 3.3.1998 and consequently direct the respondents to refix the lease amount of Rs.7 lakhs for the first year lease amount and refund the excess amount paid by the petitioner and grant the area as notified without any reduction in respect of quarry between miles 13/0 to 15/2 miles in Karakkadu to Thailampalayam villages falling in S.F.Nos.354 and 360 of Revenue villages of Arasalur and Thailampalayam respectively on the left bank of cauvery river in Musiri Taluk, Tiruchirapalli District.

2. The case of the petitioner is that the second respondent notified the sand quarry at the left bank of Cauvery river from miles

13/0 to 15/2 between Karaikkadu and Thailampalayam villages in Musiri Taluk for public auction and called for tender applications for leasing out the same for a period of three years in the District Gazette dated 7.3.1993 under Rule 8(1) of the Tamil Nadu Minor Mineral Concession Rules, 1959; that the petitioner submitted his tender application by quoting tender amount of Rs.7 lakhs as first year lease amount under preferential category as per the then rule 8(1)(c) of the Tamil Nadu Minor Mineral Concession Rules; that the amount quoted by the petitioner was the highest amount; that the same quarry was leased out only for a sum of Rs.3,500/- in the earlier year; but the second respondent rejected the highest bid of the petitioner on the only ground that the petitioner was an affluent person by his order dated 07.04.1994 on the only ground that the petitioner was an affluent person by his order dated 07.04.1994; that aggrieved against the said order, an appeal was filed by the petitioner before the Director of Geology and Mining, who also dismissed the appeal on 6.10.1994 without considering the valid point raised by the petitioner; that aggrieved against the order of the Director of Geology and Mining, the petitioner filed the writ petition before this Court in W.P.No.19645 of 1994; that in the said writ petition, originally there was an order of interim injunction restraining the respondents from leasing out the said quarry; pending the writ petition before this Court, the petitioner has also filed several representations before the second respondent, which have not been considered by them; hence the petitioner was forced to file a writ petition in W.P.No.15111 of 1996 for issuance of a writ of mandamus to direct the respondent to dispose of the representation; that this Court by its order dated 28.10.1996 directed the District collector to dispose of his representation one way or other within four weeks thereafter. Pursuant to the order of this Court, it seems an opinion has been obtained from the Government Pleader and based on the opinion the District Collector has directed the petitioner to withdraw the writ petition so as to enable him to consider his application and on the promise of the District Collector the writ petition was withdrawn. However, by order dated 6.2.1997, the District collector granted lease for a period of three years by raising the lease amount to as high as Rs.27 lakhs, which is nearly four times over and above what the petitioner has offered and also restricted the area to 10 hectares. Not satisfied with the grant, the petitioner has made a representation to the Government to the effect that the order of the Collector in raising the lease amount to Rs.27 lakhs and also reducing the area to 10 hectares is arbitrary and requested the Government to grant the entire area as notified in the Gazette for the highest amount quoted by him i.e., for Rs.7 lakhs. The Government by its order dated 3.3.1998 rejected the request of the petitioner. As against the said order, the present writ petition is filed and it has been admitted as early as 1998 and even in the present writ petition also, there is an order of injunction restraining the respondent from leasing out the remaining area as granted in the earlier writ petition. Subsequently the said order of injunction has also been extended by this Court in its order dated 6.10.1998.

3. The interim application in W.M.P.No.30491 of 2000 is filed with a prayer to permit the petitioner to quarry sand from the notified area from miles 13/0 to 15/2 between Karaikkadu and Thailampalayam villages on the left bank of Cauvery river in Musiri Taluk excluding ten hectares already granted pending disposal of the writ petition.

4. On 19.12.2000, this Court after hearing the learned counsel on either side disposed of the said interim application by giving direction as follows:

"... the second respondent is directed to allow the petitioner to quarry the area notified in the Gazette Notification dated 7.3.1993 less the area already granted on lease on 6.4.1997 by enhancing the lease amount by 20% over and above the lease amount fixed in the order dated 6.2.1997. The petitioner is also liable to pay all other legal dues which the lessee is liable to pay under the provisions of the Act."

5. Subsequently, clarification applications have been filed by the petitioner in W.M.P.Nos.16925 and 10752 of 2001 seeking clarification of the order dated 19.12.2000. The said applications have been disposed of on 18.7.2001 by observing as follows:

".... 6. The earlier order is unambiguous. The respondents are directed to permit the petitioner to quarry the entire area as published in Gazette dated 17.3.93 minus what has been granted to him in the earlier instance, on the petitioner making 20% over and above what he has paid for the earlier three years as lease amount. Now the petitioner himself filed an application restricting the area to 25 hectares. The area can very well be restricted to 25 hectares but the lease amount cannot be restricted. The respondents are directed to demarcate the 25 hectares specifically after issuing prior notice to the petitioner. The lease amount directed to be paid by the petitioner for the area would be 20% over and above the lease amount paid for last of the three years for which he was granted quarry lease in the year 1997. This 20% over and above of Rs.38,88,000/- covers the area of 25 hectares. The petitioner has to pay 20% more for each of the following two years."

7. The petitioner has to make not only the 20% enhanced lease amount but also the seigniorage fee and other legal dues which are leviable by the Government from time to time. Any amount paid pursuant to the order of this Court dated 19.12.2000, has to be given credit to the amount directed to be paid by the petitioner by this order. The respondent, the District collector is directed to execute the lease deed without any further delay.

6. Learned counsel appearing for the petitioner submits that when the writ petition is pending, the Government has issued G.O.Ms.No.95,

Industries (MMC.1) dated 01.10.2003 by which the Government themselves took over all the sand quarrying activities. The said Government Order was challenged by the lessees, which are subject matter in writ petitions and ultimately the G.O. was upheld by the Supreme Court in the case of State of Tamil Nadu v. P.Krishnamoorthy, (2006) 4 SCC 517. The Supreme Court in the above said judgment after taking into consideration of the arguments on either side, has upheld the validity of the Government Order by giving certain directions to the respondents. As per the direction given by the Supreme Court, the petitioner is entitled to quarry for six months period with proportional reduction in the lease amount.

7. Learned Government Pleader appearing for the respondents submits that what ever benefit given under the above said Supreme Court Judgment would be equally available to the petitioner. As a matter of fact, subsequent to the pronouncement of the above judgment of the Supreme Court, 52 lessees, who are entitled to have the benefit as per paragraph No.36 of the said judgment, were permitted to quarry for a period of six months. However, the petitioner was included in the list of 52 lessees.

8. Heard the arguments on either side. The Supreme Court, while upholding the G.O. Ms.No.95 in the case of State of Tamil Nadu v. P.Krishnamoorthy, (2006) 4 SCC 517, has given certain directions in paragraph 36 of its judgment, which read as under :

"In regard to mining leases subsisting as on 2-10-2003, we have read down Rule 38-A as terminating such leases in terms of the contract (lease deeds) by six months, without assigning cause and without any liability to pay compensation. Such of those writ petitioners (the respondents herein) whose leases were subsisting on 23-10-2003 (and whose activities were stopped with effect from that day) will be entitled to carry on the quarrying activities for a period of six months or for the actual unexpired period of the lease (as on 2-10-2003), which ever is less. This benefit will be available to even those who have orders of the court for grant of mining leases, but where mining leases were not executed for one reason or the other. It is, however, made clear that the State Government is at liberty to prematurely terminate the leases for any of the causes mentioned in Section 4-A (2), by giving a notice and hearing under Section 4-A(3), if they want to terminate any lease within the said period of six months." (emphasis supplied)

9. In the present case, as already stated, pursuant to the order of this Court dated 19.12.2000 made in WPMP No.30491 of 2000, an order has been passed by the District Collector in his proceedings in ROC No.920 of 1993 dated 20.03.2001 granting lease for three years. But however, lease deed has not been executed. The petitioner was not allowed to quarry. While that being so, G.O.Ms.No.95 Industries dated

01.10.2003 came into force from 02.10.2003 onwards taking over all quarrying activities by the Government. The observation of the Supreme Court in the case of State of Tamil Nadu v. P.Krishnamoorthy, (2006) 4 SCC 517 at paragraph 36 has been extracted in the previous paragraph. From that observation it is evident that the petitioner is also entitled to the benefit as he has been granted lease for three years by proceedings dated 20.03.2001 of the District Collector, Trichy. The present writ petition is also pending wherein interim order is also granted in favour of the petitioner. Hence, the benefit of the Supreme Court judgment permitting the petitioner to quarry for six months is equally applicable and available to the petitioner also on the petitioner fulfilling the other conditions.

10. In the facts and in the circumstances, as stated above and in the light of the decision of the Supreme Court in the case of Krishnamoorthy, cited supra, the writ petition is allowed to the extent that the petitioner is entitled to quarry for a period of six months in respect of the area given in lease in the proceedings of the District Collector in Na.Ka.Aa.No.920 of 1993 dated 20.03.2001 on the petitioner complying with the other conditions. The petitioner is also entitled to proportionate remission in the lease amount as per G.O.Ms.No.95 dated 01.10.2003.

With the above observations, the writ petition is disposed off.
No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

- 1.The Commissioner
and Secretary to Government
Industries Department
State of Tamil Nadu
Fort St.George, Chennai - 9
- 2.The District Collector
Tiruchi District
Tiruchi.

+1cc to Mr.V.Sanjeevi, Advocate Sr 53
+1cc to Govt.Pleader Sr 444

BS (CO)
km/12.1.